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9 *Attorney for Non-Party*
10 *Nintendo of America Inc.*

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 IN RE GOOGLE PLAY STORE
17 ANTITRUST LITIGATION
18 EPIC GAMES, INC. v.
19 GOOGLE LLC

Nos.

3:21-md-02981-JD
3:20-cv-05671-JD

20 DECLARATION OF KRISTOPHER KIEL IN
21 SUPPORT OF NON-PARTY NINTENDO OF
22 AMERICA INC.’S MOTION TO SEAL
23 PORTIONS OF TRIAL EXHIBITS 384 AND
24 8011

25 I, Kristopher Kiel, declare as follows:

26 1. I am currently Senior Corporate Counsel in the Legal Department at Nintendo of
27 America Inc. (“NOA”). I have worked at NOA since 2014. NOA is one of many subsidiaries of
28 Nintendo Co., Ltd. (“NCL”), a corporation based in Japan. Although NCL and each of its
subsidiaries (including NOA) are separate companies, for purposes of this declaration I will refer
to NCL and its subsidiaries together as “Nintendo.” The facts stated in this declaration are based
on my own personal knowledge and, if called as a witness, I could testify to those facts.

29 2. In my current role at NOA, I am responsible for managing various legal matters
30 including litigation matters. In my role I am aware of various agreements that Nintendo has with

1 third parties and confidential financial and business information associated with those agreements
2 and other business arrangements. Based on my work experience, I am familiar with Nintendo's
3 business and strategies. Nintendo keeps business strategy information confidential to protect
4 itself from competitive harm. A significant part of my role entails being aware of and protecting
5 the confidentiality of that information.

6 3. I understand that Exhibits 384 and 8011 (the "Exhibits") in *In re Google Play*
7 *Store Antitrust Litigation*, No. 3:21-md-02981-JD (N.D. Cal) and *Epic Games, Inc. v. Google*
8 *LLC et al.*, No. 3:20-cv-05671-JD (N.D. Cal.) are to be used during trial on Tuesday, November
9 7, 2023. The Exhibits contain Nintendo's confidential information that was previously produced
10 by Google and designated "Highly Confidential - Outside Counsel Eyes Only" pursuant to the
11 operative protective orders (see, e.g., Case No. 3:21-md-02981-JD, ECF 248).

12 4. I make this declaration on behalf of Nintendo in support of Nintendo of America's
13 Motion to Seal Portions of Trial Exhibits 384 and 8011.

14 5. I have reviewed certain portions of the Exhibits provided to Nintendo by counsel
15 for Google. The portions of the Exhibits I reviewed are non-public information relating to
16 Nintendo that is sensitive and highly confidential. The information would potentially cause
17 substantial competitive harm to Nintendo if disclosed to the public.

18 6. Several portions I reviewed relate to competitively sensitive information about
19 Nintendo's contracts and business relationship with Google. The pages labeled GOOG-PLAY-
20 004146699.R, GOOG-PLAY-004146730.R, and GOOG-PLAY-004146731.R in Exhibit 384
21 include financial and term information relating to a deal between Nintendo and Google. The
22 pages labeled GOOG-PLAY-004146698.R, GOOG-PLAY-004146701.R, GOOG-PLAY-
23 004146703.R, GOOG-PLAY-004146730.R, GOOG-PLAY-004146731.R, and GOOG-PLAY-
24 004146739.R in Exhibit 384 and GOOG-PLAY-000851374.R and GOOG-PLAY-000851384.R
25 in Exhibit 8011 reference whether Nintendo has executed contracts with Google that include
26 certain substantive provisions.

27 7. Nintendo treats its contracts and the specific provisions within them as highly
28 confidential. Nintendo's agreements with Google reflect sensitive information about Nintendo's

1 business strategies, including strategies for negotiation with partners and developing content and
2 partnering with content platform operators such as Google. The provisions and details about their
3 arrangement, terms, and negotiation are not available to the public. Disclosure of that
4 information could lead to substantial competitive harm to Nintendo because competitors could
5 use the provisions in Nintendo's contracts with Google to Nintendo's detriment. Competitors
6 seeking to make inroads with Google could copy the contractual provisions that Nintendo
7 negotiated with Google. For example, competitors could attempt to structure their deals to match
8 the financial and term provisions of Nintendo's contract with Google. That would obviate any
9 competitive advantage Nintendo obtained through its negotiations with Google. More broadly,
10 competitors could adopt Nintendo's general approach to working with content platform operators
11 and, by doing so, gain ground on Nintendo in competing to develop and distribute content.

12 8. Many of the document portions I reviewed comprise highly confidential financial
13 information. The pages labeled GOOG-PLAY-004146703.R and GOOG-PLAY-004146707.R in
14 Exhibit 384 contain a chart and line referring to "Nintendo" that describe confidential financial
15 details reflecting terms and performance of the business relationship between Nintendo and
16 Google.

17 9. The growth, revenue, value, cost, spend, rankings, bookings, margins, market,
18 share, and other performance information described in these documents is highly confidential and
19 competitively sensitive information. This type of financial and marketing information is non-
20 public. Nintendo keeps this information secret and confidential. Publicly disclosing growth,
21 revenue, value, cost, spend, rankings, bookings, margins, market, and/or share information
22 relating to Nintendo and its business dealings with Google would result in competitive harm to
23 Nintendo. Competitors could leverage that information to gain a more thorough understanding of
24 Nintendo's business and marketing strategies and priorities relating to content development for
25 Google and in general. Competitors could use that information against Nintendo by taking steps
26 to counteract Nintendo's business strategies and priorities, such as Nintendo's approach to
27 content development. The highly confidential financial and marketing information would provide
28 competitors with an advantage they would not have if the information remained non-public.

1 10. Some of the material I reviewed relates to Nintendo's relationship with Google.
 2 The pages labeled GOOG-PLAY-004146701.R and GOOG-PLAY-004146707.R in Exhibit 384
 3 and GOOG-PLAY-000851374.R and GOOG-PLAY-000851384.R in Exhibit 8011 describe
 4 Nintendo's relationship and negotiation strategy with Google.

5 11. This non-public and highly confidential information relating to the relationship
 6 between Nintendo and its business partners is competitively sensitive. Nintendo has developed a
 7 relationship with its business partners over many years. If non-public and confidential
 8 information about the Nintendo's relationship with its business partners were disclosed publicly, a
 9 competitor could use that information to Nintendo's detriment by copying Nintendo's strategy for
 10 dealing with its business partners, including Nintendo's approach to interacting and negotiating
 11 with business partners and the unique combination of contractual arrangements entered into by
 12 the two companies. That could lead to Nintendo receiving less attention from business partners
 13 while other competing content developers receive more, which would result in competitive harm
 14 to Nintendo. Thus, revealing details about the Nintendo's relationship other business partners
 15 could potentially undermine Nintendo's competitiveness.

16 12. The chart below summarizes my review of material from the Exhibits.

Exhibit Number (Bates Number)	Document Description	Portion Sought to Be Sealed	Reason(s) for Sealing Request
Exhibit 384 (GOOG-PLAY-004146698.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146698.R	References whether Nintendo has executed contracts with Google that include certain substantive provisions
Exhibit 384 (GOOG-PLAY-004146699.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146699.R	Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information, all of which is subject to contractual confidentiality protections

Exhibit Number (Bates Number)	Document Description	Portion Sought to Be Sealed	Reason(s) for Sealing Request
Exhibit 384 (GOOG-PLAY-004146701.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146701.R	References whether Nintendo has executed contracts with Google that include certain substantive provisions; describes Nintendo's relationship and negotiation strategy with Google
Exhibit 384 (GOOG-PLAY-004146703.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146703.R	References whether Nintendo has executed contracts with Google that include certain substantive provisions; describes confidential financial details reflecting terms and performance of the business relationship between Nintendo and Google
Exhibit 384 (GOOG-PLAY-004146707.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146707.R	Describes Nintendo's relationship and negotiation strategy with Google; discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information, all of which is subject to contractual confidentiality protections
Exhibit 384 (GOOG-PLAY-004146730.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146730.R	Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information, all of which is subject to contractual confidentiality protections

Exhibit Number (Bates Number)	Document Description	Portion Sought to Be Sealed	Reason(s) for Sealing Request
Exhibit 384 (GOOG-PLAY-004146731.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146731.R	Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information, all of which is subject to contractual confidentiality protections
Exhibit 384 (GOOG-PLAY-004146739.R)	Games Velocity Program V1 Business Impact Assessment	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-004146739.R	References whether Nintendo has executed contracts with Google that include certain substantive provisions, contracts which are subject to contractual confidentiality protections
Exhibit 8011 (GOOG-PLAY-000851374.R)	Hug program status	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-000851374.R	Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, as part of an underlying contract subject to contractual confidentiality protections; describes Nintendo's relationship and negotiation strategy with Google
Exhibit 8011 (GOOG-PLAY-000851384.R)	Hug program status	Excerpts referencing confidential Nintendo information on the page labeled GOOG-PLAY-000851384.R	Discloses competitively sensitive information about Nintendo's contracts and business relationship with Google, as part of an underlying contract subject to contractual confidentiality protections; describes Nintendo's relationship and negotiation strategy with Google

1 I declare under the penalty of perjury of the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed this 6th day of November 2023 in Sammamish, Washington.

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Kristopher Kiel

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